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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1560

JOHN F. GRAHAM,

Petitioner,

v.

JOHN J. WILSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable, The Chief Justice, and The Associate Justices of The Supreme Court of the United States.

The petitioner, *pro se*, respectfully petitions this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit which upheld the decree in favor of respondent and dismissed petitioner's action for deprivation of petitioner's civil rights, and in support of his petition does show:

1. The opinion of the United States Court of Appeals for the District of Columbia Circuit is not reported as of this date and the judgment is appended hereto on page A-1, *infra.*

2. The judgment of the United States Court of Appeals for the District of Columbia Circuit upholding the judgment of the United States District Court for the District of Columbia and remanding for entry of a judgment of dismissal is dated January 26, 1976.

JURISDICTION

The jurisdiction of the Honorable Court to review by way of certiorari is based on United States Code, Title 28, Sections 1254(1) and 2101(a), and Supreme Court Rules, Rule 19, Subsection 1(b).

QUESTION PRESENTED

Is a lawyer liable for depriving a plaintiff of his civil rights in instances where the lawyer knows the plaintiff will not be afforded his Seventh Amendment right to trial by jury unless he is represented by counsel and the lawyer nevertheless declines the plaintiff's proffered employment?

CONSTITUTIONAL PROVISION AND RULE INVOLVED

United States Constitution, Seventh Amendment:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury *shall be preserved*, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of common law. [Italics added.]

Rule 38, Federal Rules of Civil Procedure:

> (a) The right of trial by jury as declared by the Seventh Amendment to the Constitution or was given by a statute of the United States *shall be preserved to the parties inviolate.* [Italics added.]

STATEMENT

On March 17, 1975, respondent, a highly respected corporation lawyer in the District of Columbia, was proffered employment by petitioner who desired respondent to represent petitioner in a case then pending in the United States Court of Appeals for the District of Columbia Circuit. This case (*Graham v. American Psychiatric Association, et al.*, C.A.D.C. No. 75-1329) was one of several petitioner had initiated in the U.S. District Court for the District of Columbia. Although all the cases had been filed pursuant to 42 U.S.C. § 1983 or 42 U.S.C. § 1985 the cases were dismissed by the U.S. District Court and, where the cases had been appealed, the dismissals were upheld by the U.S. Court of Appeals. Because of petitioner's inability to retain counsel, petitioner filed his cases *pro se*, and the courts' dismissals leads petitioner to believe that non-lawyers who attempt litigation without legal counsel will invariably be denied

their Seventh Amendment right to trial by jury.[1]

Petitioner's cases arose from the fact that, after petitioner had been arrested pursuant to 18 U.S.C. § 876 by an agent of the Federal Bureau of Investigation for mailing a threatening letter, petitioner had been ordered committed to St. Elizabeths Hospital (a federal mental institution) by a judge of the District of Columbia Court of General Sessions, which court had no jurisdiction of federal offenses. Petitioner contended he was falsely imprisoned in St. Elizabeths Hospital and based his complaints on the following series of events which resulted in petitioner's imprisonment:

On November 10, 1965, petitioner mailed a letter threatening injury to a resident of California who had

[1] From 1967 to 1974, inclusive, petitioner filed thirteen civil actions, *pro se*, pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985, with the U.S. District Court, all of which civil actions arose from petitioner's commitment to St. Elizabeths Hospital and all of which were dismissed on the ground that petitioner had failed to state a claim upon which relief could be granted. Civil actions filed with the U.S. District Court by petitioner include *Graham v. Meltzer*, No. 1278-67; *Graham v. Greene, Kelly and Murphy*, No. 1279-67; *Graham v. Cameron*, No. 1280-67; *Graham v. Ryan*, No. 1281-67; *Graham v. Boruchow*, No. 1282-67; *Graham v. United States*, No. 1283-67; *Graham v. Moore*, No. 2948-67; *Graham v. Webster*, No. 721-68; *Graham v. Blazek and Miller*, No. 1381-69; *Graham v. Klinger*, No. 1382-69; *Graham v. Hoover*, No. 951-71; *Graham v. Jacob*, No. 1567-73; *Graham v. American Psychiatric Association, Freedman and Gibson*, No. 74-1765. In 1972 petitioner filed an action with the U.S. Court of Claims against the United States for breach of contract implied in fact (*Graham v. United States*, No. 207-72), which action was also dismissed. Certiorari was denied by this court in *Graham v. Greene, Judge, et al.*, 393 U.S. 848 (1968), and *Graham v. United States*, 410 U.S. 983 (1973).

abducted petitioner's daughter (see California Penal Code, § 265). On November 30, 1965, petitioner was arrested by one John Blazek, a Special Agent of the FBI. Agent Blazek did not, however, take petitioner before a U.S. Commissioner; instead he took petitioner before one Harold H. Greene, a judge of the D.C. Court of General Sessions, who was ostensibly sitting as a committing magistrate. In violation of Rule 5, Federal Rules of Criminal Procedure, Judge Greene, without affording petitioner a preliminary hearing, invoked 24 D.C. Code § 301(a) to order petitioner committed to the District of Columbia General Hospital for a 30-day period of mental observation. Since 24 D.C. Code § 301(a) authorizes only a *court* to order such commitments it would appear that Judge Greene was sitting as a court and not as a comittting magistrate. If Judge Greene was sitting as a committing magistrate he denied petitioner a right to a speedy trial by failing, pursuant to Rule 5, F.R.Cr. P., to bind petitioner over to the U.S. District Court; if Judge Greene was sitting as a court he exceeded the court's jurisdiction, inasmuch as the D.C. Court of General Sessions had no jurisdiction of offenses against the United States.

After a 30-day period of confinement in the D.C. General Hospital petitioner was taken before one Catherine B. Kelly, also a judge of the D.C. Court of General Sessions. At a so-called competency hearing in Judge Kelly's courtroom one Luke F. Grande, M.D., a D.C. General Hospital psychiatrist, testified that petitioner was "psychotic." This testimony was patently false since the D.C. General Hospital clinical records pertaining to petitioner reflected no aberrant behavior.

On the basis of Dr. Grande's testimony and on the motion of the Government, Judge Kelly ordered petitioner

committed pursuant to 24 D.C. Code 301(a), to St. Elizabeths Hospital on January 4, 1966. Petitioner was not, however, indicted until February 24, 1966, and he was not arraigned until May 23, 1966. On May 23, 1966, petitioner was arraigned in the U.S. District Court and ordered released from St. Elizabeths Hospital on his own recognizance. On October 19, 1966, the Government moved for a dismissal of the indictment.

In moving for dismissal of the indictment the Government had no alternative. When 18 U.S.C. § 876 was enacted the Congress made it clear that 18 U.S.C. § 876 was designed to punish kidnapers who wrote extortion letters. The statute was *not* enacted to penalize those who threatened a daughter's abductors. Since petitioner was never charged with committing an offense against the District of Columbia it would appear that, in invoking 24 D.C. Code § 301(a) to effect petitioner's imprisonment, Judge Greene and Judge Kelly either committed a criminal offense (see 18 U.S.C. § 241) or were intermeddlers and tortfeasors.[2] That Judge Greene and Judge Kelly did not know the jurisdiction of their own court is incredible and it must therefore be presumed that they succumbed to pressure from petitioner's adversaries in California (or their agents) to make certain that petitioner was "put away."[3]

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[2]The maxim is: With him who meddles lies the blame when matters don't to him pertain. (Culpa est immiscere se rei ad se non pertinenti.) Since petitioner had committed no offense against the District of Columbia the intermeddling of Judge Greene and Judge Kelly was an unwarranted exercise in *parens patriae.*

[3]While Judge Greene and Judge Kelly might deny that they ordered the imprisonment of petitioner for what he might do rather than for what he had done (preventive detention) they accomplished the same objective by effecting a change of petitioner's (continued)

By no stretch of the imagination could mailing a threatening letter be interpreted as an offense against the laws of the District of Columbia. Indeed, mailing a threatening letter is in itself not a criminal offense unless the threat is directed against the President of the United States or it is directed against a person from whom a kidnaper is attempting to extort money.[4] Inasmuch as

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[3](continued) status from a sane to an insane person. The precedent for punishing people because of their status was established by this Honorable Court in 1944. During World War II 100,000 Japanese-Americans were evicted from their homes because of their status by Executive Order 9066; the constitutionality of the Executive Order was upheld in Korematsu v. United States, 319 U.S. 432.

[4]For the intent of Congress in enacting 18 U.S.C. § 876 see Senate Report No. 498, Committee on Post Offices and Post Roads, 72d Congress, 1st Session:

> The Senate Committee on Post Offices and Post Roads, having had under consideration H.R. 96, to punish the sending through the mails of certain threatening communications, reports the bill with a recommendation that it do pass. Similar bills were introduced in the Senate and the House of Representatives to curb the growing practice of using the mails for sending to intended victims [of kidnaping] demands for money and dire threats of confinement or death for members of [the victim's] family unless the demands were promptly met.

See also House Report No. 692, Committee on the Post Office and Post Roads, 72d Congress, 1st Session:

> Hearings were held by your committee on measures referred to it providing punishment for depositing extortion communications in the mails, and at these hearings the need for such legislation was forcibly brought out by the proponents of the bills. Since these hearings, a new outrage has been perpetrated in the kidnaping of the son (continued)

petitioner was not a kidnaper it would appear that, in mailing a letter threatening injury to a resident of California, petitioner had committed no crime. For a judge to order a law-abiding citizen committed to a public mental hospital is an act of unspeakable cruelty; as every judge is bound to know, it is a foregone conclusion that any person committed to a mental hospital will be labeled "schizophrenic," "psychotic," "paranoid" or "mentally ill" (i.e., insane). Speaking for the court Judge Tamm of the U.S. Court of Appeals for the District of Columbia Circuit said in *In re Ballay*, 482 F.2d 648 (1973) at 668-669:

> Besides the social ostracism involved in a finding of mental illness, the very livelihood of the individual may be at stake * * *. The situation is aggravated since the discharged person not only must cope with the stigma of having once been hospitalized, but he must often continue to cope with the "mental illness" label itself. Of the 384 patients hospitalized at St. Elizabeths in 1969 who were subsequently dismissed, only 3 were discharged as "recovered." The bulk of the remainder were discharged with labels such as "improved" or "mentally ill – not a danger."

In 1973 *Science* magazine published an article relating

[4](continued) of the famous aviator, Charles A. Lindbergh, and our mail system used to convey the threats and demands of the kidnapers. *** The crime of kidnaping, which seems to be on the increase, is more injurious in its effect on both the victim and the families involved than any other crime on the calendar of offenses, and our action is both timely and imperative.

the experience of eight persons (a psychology graduate student, three psychologists, a pediatrician, a psychiatrist, a painter and a housewife) who were admitted to mental hospitals when they asserted they were "hearing voices." Although, after admission, they acted normally, each was discharged with a diagnosis of "schizophrenic – in remission." The article said at 254:

> [I]t is doubtful that people really regard the mentally in the same way that they view the physically ill. A broken leg is something one recovers from, but mental illness allegedly endures forever. A broken leg does not threaten the observer, but a crazy schizophrenic? There is by now a host of evidence that attitudes toward the mentally ill are characterized by fear, hostility, aloofness, suspicion, and dread. The mentally ill are society's lepers.[5]

While psychiatrists assert that there is no more stigma attached to mental illness than to physical illness, there is an enormous difference between the psychiatrist's relationship to the mentally ill person and the physician's relationship to the physically ill person. The psychiatrist who sticks the "mental illness" label on a mental hospital inmate becomes the inmate's de facto guardian ad litem, whereas the physician treating a patient for physical illness does not consider this justification for intervening in his patient's personal affairs. A 1970 article in the *Journal of Consulting and Clinical Psychology* stated at 172:

[5]D. L. Rosenhan, "On Being Insane in Sane Places," 179 *Science* 250 (1973).

Despite professional protestations to the contrary, the prevailing academic view of mental illness is implicitly a negative one. The development of a professional lexicon (psychosis, mental illness, patients, etc.) only temporarily ameliorates this strongly negative evaluation. The euphemistic component of such labels fails to conceal the underlying reference: nonperson. The nonperson cannot manage his own affairs; he cannot deal with "reality," he must be "treated and cured." Other people must decide when he is well enough to face a bar of justice, and this is all done "for the good of the patient," who is obviously not capable of self-determination. To work toward public acceptance of the professional definition of mental illness, with its attendant degraded status, is to be oblivious to a bare fact:

> To call any item of behavior a manifestation of mental illness means that the behaving person is then regarded as being incapable of personally bringing about a change in that behavior.[6]

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[6]Theodore R. Sarbin and James C. Mancusco, "Failure of a Moral Enterprise: Attitudes of the Public Toward Mental Illness," 35 *J. Consult. and Clinic. Psychol.* 159 (1970). Although it is an epidemiological impossibility for more than 50 persons per 100,000 population to be afflicted with insanity, annual admissions to public mental hospitals exceed 200 per 100,000 population. In *Jackson v. Indiana*, 406 U.S. 715 (1971) Mr. Justice Blackmun, speaking for the Court, said at 736-737.

> The States have traditionally exercised broad power to commit persons found to be mentally ill. The substantive limitations in the exercise of this power and the procedures for invoking it vary drastically among the States. * * * The bases [for commitment] that have been articulated include

(continued)

When petitioner met with respondent on March 17, 1975, petitioner anticipated that, as an officer of the court, respondent might wish to investigate the circumstances of petitioner's commitment to St. Elizabeths Hospital. Respondent, however, displayed no such curiosity. Respondent readily acknowledged that, because the D.C. Court of General Sessions had no jurisdiction of federal offenses, petitioner's commitment to St. Elizabeths Hospital was unlawful, but he declined petitioner's proffered employment for what appeared to be frivolous reasons. Although respondent has since claimed he had no obligation to

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[6](continued) dangerousness to self, dangerousness to others, and the need for care or treatment or training. Considering the number of persons affected, it is perhaps remarkable that the substantive constitutional limitations on this power have not been more frequently litigated.

What is even more remarkable is this Honorable Court's innocence. Except in very rare instances no person who has been unjustly or unlawfully committed to a mental hospital has been awarded damages; usually the person injured cannot even get his day in court. As the law now exists a psychiatrist is regarded by the courts as a competent witness but a person who has been labled "mentally ill" by the selfsame psychiatrist is regarded as incompetent. There may have been instances where a court has questioned the qualifications and motives of a psychiatrist sued by a person the psychiatrist had labeled "mentally ill" but petitioner does not know of any. A possible explanation for the high rate of admissions to public mental hospitals is the fact that appropriations to public mental hospitals exceed $2 billion a year (according to the *Washington Post*, January 22, 1976, President Ford has proposed that the 1977 appropriation for St. Elizabeths be raised from $66 million to $133 million) and the fact that the number of public mental hospital employees is greater than the number of persons employed by, for example, Standard Oil of New Jersey. If psychiatrists were not prodigal in their diagnoses of mental illness the stability of this gigantic bureaucracy would be seriously jeopardized.

accept petitioner as a client his position is not supported by the American Bar Association's Code of Professional Responsibility.[7] When it became apparent that respondent had acted contrary to the letter and the spirit of the ABA's Code petitioner filed a civil action against respondent in the U.S. District Court pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1985. This action was dismissed by the District Court on August 27, 1975, and the U.S. Court of Appeals granted respondent's motion for summary affirmance on January 26, 1976.

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[7]The Code of Professional Responsibility includes the following paragraphs:

> **EC 2-26**: A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and to the bar generally.
>
> **EC 2-28**: The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

It is understandable (though not excusable) that lawyers are reluctant to antagonize psychiatrists, since psychiatrists can do lawyers a lot of favors. Ezra Pound spent more than twelve years in St. Elizabeths Hospital, during which time his estate was administered by Covington & Burling. In 1958 Arnold, Fortas & Porter arranged to have Pound discharged from St. Elizabeths as "incurably insane" and thereby became eligible to share legal fees with Covington & Burling as Pound's estate administrators.

ARGUMENT

Although the right of trial by jury in civil cases has been questioned by persons seeking to reform the courts such questioning is academic as long as the Constitution includes the Seventh Amendment. Despite the desire of some persons to abolish the Seventh Amendment the fact remains that without the protection of the Seventh Amendment every plaintiff in a law suit would be subjected to the caprice of a possibly venal judge. If the judge favors the defendant the judge can, without knowing any of the facts, throw the case to the defendant by dismissing the complaint. Needless to say, if this were the absolute prerogative of judges the opportunities for judicial tyranny would be limitless, and it was to prevent this sort of tyranny that the Seventh Amendment was included in the Constitution by the Framers. This was emphasized in the Opinion of the Court by Mr. Justice Brewer in *Walker v. Southern Pacific Railroad*, 165 U.S. 593 (1897) at 596:

> The Seventh Amendment, indeed, does not attempt to regulate matters of pleading or practice, or to determine in what way issues shall be framed by which questions of fact are to be submitted to a jury. Its aim is not to preserve mere matters of form and procedure but *substance of right*. This requires that questions of fact in common law actions shall be settled by a jury, and that the court shall not assume directly or indirectly *to take from the jury or to itself such prerogative.* [Italics added.]

The right of trial by jury in civil cases is not a modern invention. As Mr. Justice Sutherland said for the Court in *Dimick v. Schiedt*, 293 U.S. 474 (1934) at 485-486:

The right of trial by jury is of ancient origin, characterized by Blackstone as "the glory of the English law" and "the most transcendent privilege which any subject can enjoy" (Bk. 3, p. 379); and, as Justice Story said (2 Story on the Constitution, § 1779), " . . . the Constitution would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms." With, perhaps, some exceptions, trial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases. Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.

A few months later Mr. Justice Van Devanter, speaking for the Court, said of the Seventh Amendment in *Baltimore & Carolina Line v. Redman*, 295 U.S. 654 (1934) at 657:

> The aim of the [Seventh] Amendment, as this Court has held, is to preserve the substance of the common-law right of trial by jury as distinguished from mere matters of form or procedure, and particularly to retain the common-law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, *issues of law* are to be resolved *by the court* and *issues of fact* are to be determined *by the jury* under appropriate instructions by the court. [Italics added.]

This opinion was reiterated by the United States Court of Appeals for the Fifth Circuit where, in *Oklahoma Contracting Co. v. Magnolia Pipe Line Co.*, 195 F.2d 391 (1952), certiorari denied, 344 U.S. 921 (1953), Judge Russell said at 396:

> *Any party* asserting rights in an action at common law, whether affirmatively or defensively, whether by complaint or counterclaim, in a declaratory judgment action or other proceeding, *is entitled, upon demand*, to have a jury pass upon any issue triable of right by a jury. Proper regard for the importance of this right discloses the danger of any retrospective weighing of injury resulting from the improper denial of trial by a jury. Where rights are asserted in actions at common law within the constitutional provisions the proper course is for the Court to place the case upon the jury docket as provided by the Federal Rules of Civil Procedure, 28 U.S. C.A. [Italics added.]

Although the right to trial by jury in civil cases is well established the federal judiciary has not been bound by the Seventh Amendment in cases where petitioner has been the plaintiff. Not only have petitioner's cases been regularly dismissed by the United States District Court but the dismissals have with equal regularity been upheld by the United States Court of Appeals. In his cases petitioner alleged false imprisonment and since the circumstances of the false imprisonment were such that petitioner could maintain an action pursuant to 42 U.S.C.

§1983 and/or 42 U.S.C. §1985, it would appear that petitioner was denied his right to trial by jury because he was not represented by an attorney. It is therefore petitioner's position that, where a lawyer knows his refusal to accept a plaintiff as a client will result in the plaintiff being denied the protection of the Seventh Amendment, the lawyer is liable for the deprivation of the plaintiff's civil rights.

Respondent has attempted to argue that petitioner thinks a lawyer should accept proffered employment from anyone who drifts into his office. This is, of course, nonsensical. Corporation lawyers usually have no expertise in negligence or criminal matters nor are negligence and criminal lawyers generally expert in corporate law. Indeed, a lawyer does his client a disservice where he represents the client in a case beyond his proffessional competence. Petitioner avers, however, that a lawyer has an obligation to the courts, to his profession and to the public to make certain that every person who solicits his services is given the opportunity to obtain counsel without having to engage in a door-to-door canvass of the community's legal talent. Lawyers know other lawyers; the telephone has facilitated communications, and there seems to be little excuse for any lawyer to turn a prospective client away empty-handed.

In his opposition to respondent's motion in the Circuit Court for summary affirmance petitioner said:

> Appellee has filed a motion for summary affirmance. The thrust of appellee's motion is that (a) appellant believes appellant "is entitled to be represented by any attorney he may choose, or any case, no matter how lacking in merit" and (b) there is nothing in the Constitution or the United States statutes to support such a theory.

This is not appellant's position. It is appellant's position that if a lawyer declines, for personal reasons, to accept proffered employment, he nonetheless has a professional responsibility to make certain that the person soliciting his services finds legal counsel elsewhere. Appellant contends that (a) the courts are not receptive to civil actions where the plaintiff is not represented by an attorney and (b) where a plaintiff in a civil action cannot obtain legal counsel the plaintiff is deprived of the right to trial by jury which is guaranteed by the Seventh Amendment.

In fairness to appellee it should be noted that the Bar Association of the District of Columbia does *not* look with favor on appellant's case. On January 2, 1976, appellant wrote a letter to one David N. Webster, president of the Bar Association of the District of Columbia, which letter said in part:

> The gravamen of my court litigation is very simple: I aver that I was unlawfully committed to St. Elizabeths Hospital in 1966. Either I was or I was not and it should not take ten years to obtain a judicial answer to that question. I therefore desire you to consider this letter as a formal request that the Bar Association of the District of Columbia make an exhaustive inquiry into the circumstances of my commitment to St.

Elizabeths Hospital and to file its findings in the form of an amicus brief with the U.S. Court of Appeals. I particularly desire the Bar Association of the District of Columbia to discover what person or persons originated the idea to secure my commitment to St. Elizabeths Hospital rather than to bring me to trial in accordance with due process of law. In making this inquiry the Bar Association of the District of Columbia can obtain assistance from Judge Hannon of the District of Columbia Superior Court and E. Grey Lewis, general counsel of the Department of the Navy, both of whom became familiar with my case when they were Assistant U.S. Attorneys.

Mr. Webster's reply, under date of January 5, 1976, stated:

> I have your letter of January 2, 1976, and I have received a copy of your brief. I do not anticipate that the Bar Association will undertake an investigation of these charges but I will discuss it with the Executive Committee.*

* It would appear that the Bar Association's reluctance, as expressed by Mr. Webster, to investigate the charges made by appellant was prompted by the Bar Association's desire to avoid embarrassment. If an investigation had been made by the Bar Association it would have quickly become evident that, when appellant was committed to St. Elizabeths Hospital, the Government had reason to believe the commitment was unlawful. Appellant was confined to St. Elizabeths Hospital from January 4, 1966, to May 23, 1966. An FBI memorandum, dated February 21, 1966, which is included in the FBI files pertaining to appellant, stated in part:

> On February 21, 1966, Assistant United States Attorney (AUSA)_____ Washington, D.C., advised that Graham is contesting his commitment on the grounds that DCCGS [District of Columbia Court of General Sessions] does not have jurisdiction to commit him on a felony charge. _____ advised that although this commitment was arranged by the United States Attorney's Office, it is recognized that a legal question does in fact exist as to the legality of the commitment.

Appellant was not indicted until February 24, 1966, and he was not arraigned until May 23, 1966, when he was released by the U.S. District Court on his own recognizance. On October 19, 1966, the Government moved for dismissal of the indictment.

While appellant respects Mr. Webster's opinion appellant relies heavily on a well-publicized statement of Mr. Justice Stewart of the United States Supreme Court, to wit:

> If "Equal Justice Under Law" is to be anything more than a wishful slogan, every citizen in our nation must have access to effective legal representation and services. But there is a wide gap, it seems to me, between the growing needs of many Americans for legal assistance, and the response of the legal profession.
>
> Reforms can be generated from within the profession, or they can be forced upon us by Congress and the Courts, But they will surely come.
>
> For ultimately, we are not talking about the right of a group of businessmen to make a profit or to regulate themselves; a license to practice law is more than a license to charge for services rendered. It

> is a public trust; the law is a public profession. And it is the obligation of all of us engaged in that profession to see to it that adequate legal representation is provided for everyone who needs it. [Broadcast by WETA-TV, June 17, 1975.]

> On the grounds that every American citizen is entitled to the constitutional right of trial by jury in civil cases and that this right is unavailable to plaintiffs who are not represented by an attorney, appellant opposes appellee's motion for summary affirmance.

Mr. Justice Stewart is not the first to comment on the extent to which lawyers are derelict in serving the public. In 1905, in an address at Harvard University, President Roosevelt said:

> [M]any of the most influential and most highly remunerated members of the bar in every centre of wealth make it their special task to work out bold and ingenious schemes by which their very wealthy clients, individual or corporate, can evade the laws which are made to regulate in the interest of the public the use of great wealth. Now, the great lawyer who employs his talent and his learning in the highly remunerative task of enabling a very wealthy client to override or circumvent the law is doing all that in him lies to encourage the growth in this country of a spirit of dumb anger against all laws and of disbelief in their efficacy.[8]

[8]Theodore Roosevelt, *Presidential and State Papers* (New York: 1910), Vol. 4, 419-420.

In the same year (1905) Mr. Brandeis, a future Justice of this Honorable Court, told a meeting of the Harvard Ethical Society:

> Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a great extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the "corporation lawyer," and far too little of the "people's lawyer." * * * Lawyers who would indignantly retire from a court case in the justice of which they believed, if they had reason to think that a juror had been bribed or a witness had been suborned by their client, are content to serve their client by honest arguments before a legislative committee although they have as great reason to think that their client has bribed members of the legislature or corrupted public opinion. * * * The people are beginning to doubt whether in the long run democracy and absolutism can co-exist in the same community; beginning to doubt whether there is justification for the great inequalities in the distribution of wealth, for the rapid creation of fortunes, more mysterious than the deeds of Aladdin's lamp. The people have begun to think; and they show evidences on all sides of a tendency to act.[9]

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[9]Louis D. Brandeis, "The Opportunity in the Law," *American Law Review* (1905), 559 and 562.

Speaking to the American Bar Association in 1910 Dr. Wilson, who two years later was to be elected President of the United States, said:

> A new type of lawyers had been created; and that new type has come to be the prevailing type. Lawyers have been sucked into the maelstrom of the new business system of the country. * * * They do not practice law. They do not handle the general, miscellaneous interests of society. They are not general counsellors of right and obligation. * * * They do not concern themselves with the universal aspects of society. * * * Lawyers are not now regarded as mediators of progress. Society was always ready to be prejudiced against them; now it finds its prejudice confirmed. [10]

In 1919 Mr. Reginald H. Smith, a partner in the Boston law firm of Hale & Dorr, observed in a study commissioned by the Carnegie Corporation:

> Denial of justice is not merely negative in effect; it actively encourages fraud and dishonesty. * * * Everywhere it abets the unscrupulous, the crafty, and the vicious in their ceaseless plans for exploiting their less intelligent and less fortunate fellows. The system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented. The law itself becomes

[10] Woodrow Wilson, "The Lawyer and the Community," 192 *North American Review* (1910), 609-610.

> the means of extortion. * * * The effects of this denial of justice are far reaching. Nothing rankles more in the human heart than the feeling of injustice. It produces a sense of helplessness, then bitterness. It is brooded over. It leads directly to contempt for law, disloyalty to the government, and plants the seeds of anarchy. The conviction grows that law is not justice and challenges the belief that justice is best secured when administered according to law. The poor come to think of American justice as containing only laws that punish and never laws that help. They are against the law because they consider the law against them. A persuasion spreads that there is one law for the rich and another for the poor. [11]

Even when the United States was in the depths of the Depression the nation's lawyers, many of whom were themselves making a scanty living, did little to assist the dispossessed. In 1933, at the 31st annual meeting of the Association of American Law Schools, Professor Llewellyn of the Columbia University School of Law, said:

> [T]he bar is a monopoly. It is the only wholly irresponsible monopoly in America. * * * There isn't anybody that is responsible. Nevertheless, the monopoly is perfect. You either get your lawyer, or you don't get your rights. [12]

[11] Reginald Heber Smith, *Justice and the Poor* (New York: 1971), 9-10.

[12] Karl Llewellyn, "The Bar Specializes," 31 *AALS Proceedings* (1933), 65.

Professor Llewellyn's harsh appraisal of the bar did not diminish with the passage of time. Nearly four decades later Dean Ehrlich of the Stanford Law School stated:

> I am disturbed by how many law students picture the legal profession as not simply amoral but positively immoral. In the past the public's opinion of the profession often has not been an attractive one. Since colonial times there never has been unqualified public respect for the legal profession. But it has rarely been viewed with as much disdain by as many who are about to become its members.[13]

It is true that, in the nineteenth century, eminent members of the bar, fearful of revolution precipitated by the public's discontent with one-sided justice, organized Legal Aid Societies to help the needy obtain legal counsel. Theoretically Legal Aid was supposed to receive financial support from affluent lawyers; in fact, Legal Aid received such penurious support from the bar that it became, in the words of Professor Auerbach, "the fig leaf that covered the modesty of professional efforts to remedy injustice inherent in service-for-a-fee professionalism [and] enabled lawyers to disregard the unmet legal needs of a vast lower- and middle-income populace."[14] There have been recent suggestions that legal insurance, comparable to health insurance, be made available to the public, but if the nation's experience with racketeering doctors is indicative,

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[13]Thomas Ehrlich, "Manners, Morals and Legal Education," 58 *A.B.A.J.* (1972), 1176.

[14]Jerold S. Auerbach, *Unequal Justice* (New York: 1976), 204.

legal insurance will merely encourage barratry and champerty.

Aspirants to public office have discovered that it is a sure-fire rabble-rouser to deplore the spiraling incidence of crime in the United States. But they carefully avoid mentioning that the one factor which contributes *most* to crime is the public's lack of access to the courts. Courts were established in ancient times as an alternative to the personal vendetta, it having been reasoned that punishment imposed by the State for felonies and misdemeanors in criminal matters and the payment of money to persons injured by torts in civil matters were more conducive to domestic tranquillity than the spilling of blood. Thus, to provide the means of settling neighborhood disputes with the speediest possible dispatch, Edward the Third created justices of the peace.[15] In his definitive book on justices of the peace Lambard said:

> It is good counsel *** that *** in the making of the laws and the commission of the peace (following that advice) doth leave little (or nothing) to the discretion of justices of the peace, but bindeth them fast with the chains of the laws, customs, ordinance and statutes.*** And truly it is to be wished that justices of the peace would

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[15]**18 E. 3, Stat. 2, c. 2:** Item. That two or three of the best of reputation in the counties shall be assigned keepers of the peace by the King's commission, (2) and at the same time need shall be, the same, with other wise and learned in the law, shall be assigned by the King's commission to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonable according to law and reason, and the manner of the deed.

> not * * * arrogate unto themselves authority to use their discretion, or to play (as it were) the Chancellors in every cause that cometh before them. For no way better shall the discretion of the justice of the peace appear than if he (remembering that he is *lex loquens*) do contain himself with the lists of law, and (being soberly wise) do not use his own discretion, but only where both the law permitteth, and the present case requireth it.[16]

Despite the fact that justices of the peace have proved their value through the centuries there has been a recent tendency to make the people's access to the courts even more difficult. With an eye to bigger salaries, marble courtrooms and the arrogation of power, judges have encouraged legislators to abolish inferior courts; in the District of Columbia, for example, the Court Reform and Criminal Procedure Act of 1970 transformed the D.C. Court of General Sessions into the D.C. Superior Court (a district court). The D.C. Superior Court did not, however, relinquish its jurisdiction of small claims and misdemeanors. As a consequence the D.C. Superior Court is so clogged with supplicants that it is small wonder the street-wise who have been cheated by their neighbors and exploited by the System resort to theft and violence in their quest for justice.

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[16] William Lambard, *Eirenarcha; or, Of the Office of the Justices of the Peace* (London: 1581; New York: 1970), 63-65.

If the judiciary and the bar had a sincere desire to provide everyone with the protection of the law they would insist that justices of the peace be as numerous and accessible as drug stores. Where neighbors know that, within a five-minute walk, they can find a judge who will listen to their grievances they will be less tempted to rely on self-help. Some starry-eyed members of the bar have attempted to relieve the pressure on the poor by opening storefront offices but what the people need are not storefront lawyers but storefront judges. In every city there are undoubtedly scores of lawyers who would be willing to sit for a couple of hours a day as neighborhood justices of the peace. Having the confidence (and, hopefully, the affection) of the neighborhood such justices of the peace could administer the law with maximum informality, and where jury trials were demanded, plaintiffs and defendants alike would know that the merits of their cases were being judged by those who were truly their peers. There is well-established precedent for the preservation of jury trials in justice of the peace courts in the District of Columbia. In *Capital Traction Co. v. Hof,* 174 U.S. 1 (1898) Mr. Justice Gray, speaking for the Court, said at 5, 13 and 17:

> It is beyond doubt, at the present day, that the provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia. *Webster v. Reid,* (1850) 11 How. 437, 460; *Callan v. Wilson,* (1888) 127 U.S. 540, 550; *Thompson v. Utah* (1898) 170 U.S. 343.

* * *

It must therefore be taken as established, by virtue of the Seventh Amendment of the Constitution, that either party to an action at law (as distinguished from suits of equity or in admirality) in a court of the United States, where the value in controversy exceeds twenty dollars, has the right to a trial by jury.

* * *

Justices of the peace in the District of Columbia, in the exercise of the jurisdiction conferred upon them by Congress to try and determine cases, criminal or civil, are doubtless, in some sense, judicial officers. *Wise v. Withers,* 3 Cranch, 330, 336. But they are not inferior courts of the United States, for the Constitution requires judges of all such courts to be appointed during good behavior.

CONCLUSION

While the maladministration of justice in the United States should be the concern of both the bench and the bar the ultimate responsibility for correcting the evils of the system lies with this Honorable Court. The unmitigated fact of the matter is that neither the bar nor the courts are serving the needs of the public, and they will continue in their failure to serve the public as long as the courts are under the domination of the corporation lawyers. Corporation lawyers, who often make $200,000 or more a year, regard salaried judges with genteel scorn, and judges, ever mindful of the financial power that corporation lawyers represent, respond with appropriate

deference.[17] As long as the courts are the private preserve of the rich it does not suffice for Mr. Justice Stewart and his brethren to indulge in felicitous rhetoric; the reforms necessary to restore the courts to the people are long overdue.

Petitioner contends (1) that, like all American citizens, he is entitled to the protection of the Seventh Amendment and (2) that respondent deprived petitioner of his civil rights when, for personal reasons, he declined petitioner's proffered employment. ("You either get your lawyer, or you don't get your rights.") Petitioner suggests that, in granting respondent's motion for summary affirmance, the District of Columbia Circuit placed no credence in Mr. Justice Stewart's views pertaining to professional responsibility, on which views petitioner heavily relied. In short, it would appear that, in the eyes of the Circuit Court, Mr. Justice Stewart is a clown.

It is, of course, not only Mr. Justice Stewart whom the Circuit Court has made to look like a clown. Associated with him are Theodore Roosevelt, Woodrow Wilson and generations of thoughtful critics of the nation's judicial system. Petitioner does not mean to imply that the

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[17] Petitioner's father, Arthur Butler Graham, was among the most able Wall Street lawyers of his generation. (*Who's Who in America, 1950-1951,* Vol. 26, 1039). When petitioner suggested that petitioner's father spend his twilight years on the bench petitioner's father was deeply offended. The quality that distinguished petitioner's father from corporation lawyers such as respondent and from most judges can best be described as *noblesse oblige.*

learned judges of the District of Columbia Circuit have a disrespect for this Honorable Court, or that all corporation lawyers are wicked. Petitioner suggests that, like the lowliest criminal defendant, judges and lawyers are trapped by a system from which they cannot escape.

Democracy is not the natural state of man; men the world over tend to gravitate to elitism and authoritarianism. To escape enslavement they embrace the system that promises them the opportunity to be the enslavers and discover, too late, that the system itself has become the enslaver. This is the trap in which the bar and the judiciary have been caught, a trap that only a spectacular act of violence can destroy. Petitioner therefore proposes to procure respondent's assassination as an object lesson to all lawyers. Whether petitioner consummates the deed depends upon respondent's reaction to petitioner's proposal. If respondent has an abiding faith in the system as it now exists respondent will stand firm and, if need be, sacrifice his life to insure the system's preservation. If, however, respondent's faith in the system as it now exists is not complete he will join petitioner in an effort to rejuvenate it. Petitioner is consciously risking his own life in order to secure the return of the courts to the people, and if petitioner is willing to face death to uphold a principle it is reasonable to expect respondent to do the same.

Respectfully submitted,

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APPENDIX

[Filed January 26, 1976]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-2068 **September Term, 1975**
Civil Action #75-1095

John F. Graham,
Appellant

v.

John J. Wilson,
Appellee

Before: Wright and MacKinnon, Circuit Judges

ORDER

On consideration of appellee's motion for summary affirmance, and of the response thereto, it is

ORDERED by the Court that appellee's aforesaid motion for summary affirmance is granted.

The Clerk is directed to transmit a certified copy of this order to the Clerk of the District Court as promptly as the business of his office permits.

Per Curiam